

Pursuant to Ind.Appellate Rule 65(D),
this Memorandum Decision shall not be
regarded as precedent or cited before
any court except for the purpose of
establishing the defense of res judicata,
collateral estoppel, or the law of the case.

PRO SE APPELLANT:

CARLOS MICHAEL BOWEN
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

CARLOS MICHAEL BOWEN,

Appellant-Plaintiff,

vs.

BARRY SULLIVAN,

Appellee-Defendant.

)
)
)
)
)
)
)
)
)
)

No. 79A02-0604-CV-326

APPEAL FROM THE TIPPECANOE SUPERIOR COURT

The Honorable Gregory J. Donat, Judge

Cause No. 79D04-0509-SC-04342

February 14, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Carlos Bowen appeals the trial court's grant of judgment in favor of Barry Sullivan on Bowen's small claims action for fraud. Because Bowen is appealing from a negative judgment, he has the burden of showing that the trial court's judgment is contrary to law. Finding that the trial court's judgment is not contrary to law, we affirm.

Facts and Procedural History

In 2004, Sullivan purchased a 1995 Bayliner Reflexx jet boat ("boat") on eBay for \$500.00. In late May 2005, Bowen purchased the boat from Sullivan for \$2800.00. Bowen immediately began experiencing engine problems with the boat. He attempted to remedy the problems by using carburetor clearer, but the problems persisted. Bowen then installed a new starter and delivered the boat to Ted's Aqua Marine. Ted's Aqua Marine informed Bowen "that the engine was completely shot, it had zero compression on one cylinder and very low compression on the other two cylinders." Tr. p. 4. The estimated cost of repair was at least \$4000.00. Bowen decided not to have the boat repaired, and on August 10, 2005, Bowen took it to a public auction. A man purchased the boat but then sued Bowen when he discovered the problems with it. Bowen incurred approximately \$1000.00 in attorney's fees in defending himself in that suit, and he eventually returned the purchaser's money and took back the boat.

Bowen did not notify Sullivan of the problems he had with the boat until September 7, 2005, when he filed a small claims action against Sullivan. Bowen alleged that Sullivan "misrepresented to [Bowen] sale of a boat leading [Bowen] to believe boat

was operational when in reality engine was blown requiring [\$]4700.00 to repair.” Appellant’s App. p. 1. Bowen asked for judgment in the amount of \$4221.89.

On March 8, 2006, the trial court held a hearing in the matter. Bowen testified that before he purchased the boat, Sullivan stated that he had taken the boat out on the water, but that Sullivan never offered Bowen the opportunity to take the boat out for a test run. Bowen’s stepson, Patrick Spurr, testified, “I did do the financial bidding with Mr. Sullivan” and “he did lead me to believe that it was and [sic] up and running boat[.]” Tr. p. 10. Spurr also testified that Sullivan stated that he had taken the boat out on the water six months earlier.

In his testimony, Sullivan disputed most of what Bowen and Spurr had alleged. He testified that the boat was running fine when he picked it up from the eBay seller in Tennessee, but that he never operated the boat himself after purchasing it. Next, the following exchange occurred between Sullivan and his attorney:

Q: Was it - - was there a discussion between the three of you about starting the engine?

A: We talked about starting the engine; I discussed with him that when I went and picked it up in Tennessee that the gentlem[a]n sprayed starting fluid in it to get it started and it ran for—we ran it for a minute or so and it ran far [sic] as far as I could tell, I don’t know anything about boats but as far as I could tell it sounded like it was running fine.

Tr. p. 15. Sullivan also testified that he offered Bowen and Spurr the opportunity to take the boat out for a test run or to at least start the boat and that they declined both offers. Furthermore, when asked whether the boat was in operating order when he sold it to

Bowen, Sullivan stated, “As far as I know, yes.” *Id.* at 16. Finally, Sullivan submitted into evidence the following e-mail from the eBay seller:

To whom it may concern. At the time and date of sale. This Bayliner boat motor was functioning properly. The day before the sale the boat was test driven by another potential buyer. The day the boat was picked up by Mr. Sullivan we did start the boat and the motor ran to my knowledge exactly the way it was designed to.

Transcript, Defendant’s Exhibit C.

After the hearing, the trial court entered judgment in favor of Sullivan. Bowen then filed a Motion to Correct Error of Judgement, which the trial court denied. Bowen now appeals, *pro se*.

Discussion and Decision

On appeal, Bowen argues that the trial court erred in entering judgment in favor of Sullivan. As an initial matter, we note that Bowen’s *pro se* brief is deficient in several respects. For example, there is no table of contents, no table of authorities, and no copy of the judgment being appealed. *See* Ind. Appellate Rule 46(A)(1), (2), & (10). Most significantly, Bowen has failed to support his arguments with citations to relevant authorities or the record on appeal. *Id.* at 46(A)(8)(a). Though small claims actions are designed to be informal and economical, thereby providing access to the court system to those persons who might otherwise be deterred, a party who elects to exercise his right of appeal from such an action accepts the formality of rules of the Supreme Court and Court of Appeals for the submission and determination of appeals. *Mullis v. Martin*, 615 N.E.2d 498, 500 (Ind. Ct. App. 1993). A litigant who chooses to proceed *pro se* is held to the same rules of procedure as trained legal counsel. *Id.* While Bowen may have

waived any alleged trial errors by failing to comply with the rules of appellate procedure, we prefer to decide cases on their merits if possible. *See id.*

Additionally, Sullivan has not filed a brief. When the appellee fails to file a brief, we need not undertake the burden of developing an argument on its behalf. *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006). Rather, we will reverse the judgment of the trial court if the appellant's brief presents a case of prima facie error. *Id.* Prima facie error in this context is defined as, "at first sight, on first appearance, or on the face of it." *Id.* If the appellant is unable to meet this burden, we will affirm. *Id.*

The trial court treated Bowen's claim that Sullivan misrepresented the condition of the boat as a claim for fraud. *See* Tr. p. 22. "The elements of fraud are: (1) a material misrepresentation of past or existing facts by the party to be charged, (2) which was false, (3) was made with knowledge or reckless ignorance to falsity, (4) was relied upon by the complaining party, and (5) proximately caused the complaining party injury." *Humphries v. Ables*, 789 N.E.2d 1025, 1030 (Ind. Ct. App. 2003). As the plaintiff, Bowen had the burden of proving each of these elements. As such, Bowen appeals from a negative judgment. To prevail, Bowen must demonstrate that the trial court's judgment is contrary to law. *Infinity Prods., Inc. v. Quandt*, 810 N.E.2d 1028, 1031-32 (Ind. 2004) (citing *DiMizio v. Romo*, 756 N.E.2d 1018, 1021 (Ind. Ct. App. 2001), *trans. denied*), *reh'g denied*. "A judgment is contrary to law only if the evidence in the record, along with all reasonable inferences, is without conflict and leads unerringly to a conclusion opposite that reached by the trial court." *Id.* "In conducting our review, we cannot reweigh the evidence or judge the credibility of any witness, and must affirm the trial

court's decision if the record contains any supporting evidence or inferences." *Id.* Bowen has failed to persuade us that the trial court's judgment is contrary to law.

Bowen and Spurr both testified that Sullivan claimed to have taken the boat out on the water, and Spurr testified, "[Sullivan] did lead me to believe that it was and [sic] up and running boat[.]" Tr. p. 10. Bowen argues on appeal that Sullivan's representations were false and that Sullivan knew they were false. However, Sullivan's own evidence at trial paints a different picture. In his testimony, Sullivan disputed most of what Bowen and Spurr had alleged. He testified that he believed the boat was running fine when he picked it up from the eBay seller in Tennessee. In support of this claim, he submitted into evidence the e-mail he received from the eBay seller, who asserted that the boat "ran to my knowledge exactly the way it was designed to." Transcript, Defendant's Exhibit C. Sullivan also testified that he never operated the boat himself after purchasing it. Furthermore, when asked whether the boat was in operating order when he sold it to Bowen, Sullivan stated, "As far as I know, yes." *Id.* at 16. Finally, Sullivan testified that he offered Bowen and Spurr the opportunity to take the boat out for a test run or to at least start the boat and that they declined both offers.

Bowen clearly believes that Sullivan knew of problems with the boat when he sold it. Sullivan testified that he knew of no such problems. The trial court, after seeing the witnesses first hand, listening to their testimony, and viewing the documentary evidence, granted judgment in favor of Sullivan. For us to reverse that decision, we would have to reweigh the evidence and judge the credibility of the witnesses. This we cannot do. *See Quandt*, 810 N.E.2d at 1031-32.

Affirmed.

BAILEY, J., and BARNES, J., concur.